IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1322 OF 2006

Shri Shekhar Bhalchandra Satam,
Aged 25 years, residing at
8/2, Placid Chawl, Near Vakola
Masjid Road, Kadamwadi, Vakola,
Santacruz (E),Mumbai 400 055.
(At present detained at Nasik
Road Central Prison, Nasik). Petitioner

vs.

1. Shri A.N.Roy,
Commissioner of Police,
For Greater Mumbai, Mumbai.

2. State of Maharashtra,

3. The Superintendent of Jail,
Thane Central Prison,
Thane.

4. The Superintendent of Jail,
Nashik Road Central Prison,
Nashik. Respondents

Mr.M.K.Kocharekar with Ms.Sharmila Kaushik for the petitioner.

Mr.D.S.Mhaispurk**ar**, APP for State.

CORAM : SMT.RANJANA DESAI &
ANOOP V. MOHTA,JJ.

DATED : 13th February, 2007

ORAL JUDGMENT (Per Smt.Ranjana Desai,J.).

The petitioner has been detained under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (for short, "the said Act"), under an order of detention issued by respondent 1-the Commissioner of Police, Mumbai. The order of detention is dated 27.3.2006.

2. The order of detention along with grounds of detention and the material in support thereof was served on the petitioner on 31.3.006 and the petitioner was detained. In this petition the petitioner has challenged the said order of detention.

3. The order of detention is based on a case being C.R.No.619/2005 registered at Vakola Police Station on 3.11.2005. This C.R. pertains to an incident dated 3.11.2005. The petitioner is charged under Section 324 read with 34 of Indian Penal Code. In connection with this case, the petitioner was arrested on 3.11.2005. He was ordered to be released on bail on the same day. He availed of the bail on 7.11.2005. The detaining authority has also relied on the statement of Witness "A" recorded on 27.2.2006 in which witness "A" has deposed about an incident which had taken place in October 2005. The detaining authority has also relied upon the incamera statement of witness "B" dated 27.2.2006 in which witness "B" has deposed about an incident which had occurred in last week of November 2005. It appears that the proposal for detention of the detenu was submitted on 1.3.2006 and the Detaining Authority issued the order of detention on 27.3.2006.

4. We have heard at some length Mr.Kochrekar, the learned counsel appearing for the petitioner. Mr.Kochrekar submitted that the assertion made in the order of detention that the petitioner is a dangerous person as defined in Section 2(b-1) of the said Act;

that he has unleashed a reign of terror and has became a perpetual danger to the society at large is not substantiated by the material placed before him. He submitted that first incident on which reliance is placed by the detaining authority can, by no stretch of imagination, be said to affect the maintenance of public order. The learned counsel submitted that it is clearly an incident which affects law and order. It is an individual dispute with which the public at large is not concerned. It was therefore wrong, contends the learned counsel, to include this case in the grounds of detention. The learned counsel submitted that therefore the satisfaction of the detaining authority is vitiated. He further submitted that the statements of witnesses A and B are recorded just to fill in the gap between the date on which the petitioner was released on bail i.e. on 3.11.2005 and the date of detention order i.e. 27.34.2006. The said statements are not genuine statements. The learned counsel submitted that the order of detention issued after a period of four and half months after the date on which the petitioner was released on bail is a delayed order. He submitted that there is no proper explanation for the delay and therefore the detention order must be set aside.

5. In support of his submission that the first ground does not affect public order, the learned counsel for the petitioner, relied on **Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City & Anr., 1989 Supp(1) SCC 322 and on Mustakmiya Jabbarmiya Shaikh v.**

M.M.Mehta, Commissioner of Police & ors., (1995) 3 SCC 237. On the aspect of delay, the learned counsel placed reliance on the judgment of the Supreme Court in **Pradeep Nilkanth Paturkar vs. S. Ramamurthi & ors., 1993 SCC (Cri) 392** and the judgement of this Court to which one of us (Smt.Ranjana Desai,J.) is a party, in **Austin William Luis Pinto vs. Commissioner of Police, Greater Mumbai & ors., 2005 ALL MR (Cri) 28.**

6. Mr.Mhaispurkar, the learned APP, on the other hand, submitted that though the first incident pertains to a dispute between two individuals about loan transaction, there is material to indicate that this incident had affected public order. He submitted that the incident had taken place in an open place. The residents of the area had gathered there. Therefore, it cannot be said that this incident had not affected public order. The learned APP submitted that in any case even if this incident is left out of consideration, the order of detention can be sustained on the basis of two incamera statements of witnesses A and B. In this connection, he relied on Section 5-A of the said Act. He submitted that incamera statements indicate that the petitioner is indulging in activities which affect public order.

7. As regards the submission that incamera statements were recorded to fill in the gap between the date on which the petitioner was released on bail and the date of detention order, the learned APP contended that there is no substance in this submission. He submitted that

reliance placed on **P.N.Paturkar's case (supra)** and **Austin William Luis Pinto's case (supra)** is totally misplaced. He submitted that considering the potentiality of the petitioner to indulge in prejudicial activities in future, it cannot be said that there is any delay in issuing the order of detention. He submitted that the submission that the statements of witnesses A and B were recorded to fill in the gap must also be rejected. The learned APP took us to the affidavit of the detaining authority, affidavit filed on behalf of the Sponsoring Authority by API Shri Anil Mahadev Desai and the affidavit of the Under Secretary to the Government of Maharashtra Shri W.H. Bansode in support of his submissions. He submitted that the incamera statements are genuine. There is explanation for the time taken to issue the detention order and therefore the petition deserves to be dismissed.

8. In **Piyush Kantilal Mehta's case (supra)**, while considering the distinction between 'law and order' and 'public order', the Supreme Court referred to its judgement in **Pushkar Mukherjee v. State of West Bengal, (1969) 1 SCC 10**. We may usefully refer to the observations of the Supreme Court in **Pushkar Mukharjee's** case quoted by the Supreme Court with approval. They are as under:

> "Does the expression "public order" take in every kind of infraction of order or only some categories thereof. It is manifest that every act of assault or injury to specific persons

> does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act."

9. The above observations of the Supreme Court make it clear that every act of assault or injury to specific persons does not lead to public disorder. When two people assault each other may be inside the house or on a street, there may be disorder but not public disorder. If two persons assault each other on account of a personal dispute, the society at large is not affected. There is no terror wave unleashed amongst the people at large. Such incidents can very well be dealt with under the normal law of the land. In this case, so far as the first incident is concerned, it pertains to a loan transaction between the complainant-Shri Shailesh Devendra Shanti and the petitioner. The incident had occurred at about 1.15 a.m. i.e. after midnight. No member of public was involved in this incident and there is nothing to indicate that public order was disturbed.

We are, therefore, of the opinion that the detaining authority is not right in including this incident in the grounds of detention to come to a conclusion that the petitioner is involved in the activities which affect public order.

10. The learned counsel for the petitioner is also right in drawing support from the judgment of the Supreme Court in **Mustakmiya J. Shaikh's** case. In that case the Supreme Court has made it clear that in order to bring the activities of a person within the expression "acting in any manner prejudicial to the maintenance of public order", the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to breach of "public order". In this case, there is nothing to indicate that on account of the first incident even tempo of the life of the society was disturbed. Reliance placed on the first incident by the detaining authority is totally misplaced.

11. It is true that statements of witnesses A and B indicate that the petitioner and his associates are

indulging in extortion. However, we are not inclined to uphold the order of detention on the basis of incamera statements in the fact of this case. We are aware that under Section 5-A of the said Act, an order of detention can be upheld even on the basis of one of the grounds of detention, if it is found that the said ground indicates the petitioner's propensity to indulge in activities prejudicial to the maintenance of public order. However, in this case, in our opinion, the respondents cannot sustain the order of detention with the aid of Section 5-A of the said Act.

12. It is pertinent to note that bail was granted to the petitioner-detenu on 3.11.2005 and he has availed of the bail order on 7.11.2005. The order of detention is issued on 27.3.2006. After the petitioner availed of the bail order, two incamera statements came to be recorded on 27.2.2006. In this connection, reliance placed on the judgement of this Court in **Austin Wiliam Luis Pinto's case** is apt. In that case also, this Court found that the first incident on which reliance was placed by the detaining authority did not affect the public order. After the detenu had availed of the bail order on 2.7.2003, two incamera statements came to be recorded. This Court referred to the judgment of the Supreme Court in **Pradeep N. Paturkar's case** and observed that considering the fact that an incident clearly affecting law and order has been cited as the first ground these delayed statements have an adverse impact on the detention order. In the circumstances,

the order of detention was set aside. In our opinion, the ratio of this judgement is clearly attracted to the facts of this case. In the circumstances, the order of detention will have to be set aside.

12. Hence, we pass the following order:

O R D E R

(i) The order of detention dated 27th March, 2006 passed by the Commissioner of Police, Brihanmumbai is quashed and set aside.

(ii) The petitioner-Shri Shekhar Bhalchandra Satam is ordered to be released forthwith unless otherwise required in any other case.

(iii) Petition is disposed of accordingly.

[SMT.RANJANA DESAI,J.]

[ANOOP V. MOHTA,J.]